

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES, LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor.

IRVING H. PICARD, Trustee for the Substantively  
Consolidated SIPA Liquidation of Bernard L.  
Madoff Investment Securities LLC and Bernard L.  
Madoff,

Plaintiff,

v.

THE LUSTIG FAMILY 1990 TRUST; and DAVID  
I. LUSTIG, individually and in his capacity as  
Trustee for The Lustig Family 1990 Trust,

Defendants.

Adv. Pro. No.: 10-04417 (SMB)

IRVING H. PICARD, Trustee for the Substantively  
Consolidated SIPA Liquidation of Bernard L.  
Madoff Investment Securities LLC and Bernard L.  
Madoff,

Plaintiff,

v.

DAVID IVAN LUSTIG,

Adv. Pro. No. 10-04554 (SMB)

Defendant.

**ORDER GRANTING PARTIAL SUMMARY JUDGMENT  
STRIKING AFFIRMATIVE DEFENSES**

On February 28, 2017, Irving H. Picard (“Trustee”), as trustee for the substantively consolidated liquidation of the business of Bernard L. Madoff Investment Securities, LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and the estate of Bernard L. Madoff filed his Motion to Strike Affirmative Defenses (“Motion to Strike”) under Federal Rule of Civil Procedure 12(f), made applicable to this proceeding by Rule 7012 of the Federal Rules of Bankruptcy Procedure, in Adversary Proceeding 10-04417 (ECF Nos. 74-75) and Adversary Proceeding 10-04554 (ECF Nos. 76-77) (collectively the “Adversary Proceedings”) seeking an order striking the Defendants’ Lustig Family 1990 Trust (“Lustig Trust”) and David Ivan Lustig, individually and as Trustee of the Lusting Trust (collectively, “Defendants”) Affirmative Defenses Eight (Court should use equitable powers to dismiss the Trustee’s claims), Nine (Court should grant Defendants an equitable credit), Ten (Trustee’s claims are barred by the single satisfaction rule under 11.U.S.C. §550(d)), Eleven (Defendants are entitled to a credit under the theory of recoupment), and Twelve (Defendants are entitled to a set-off under 11 U.S.C. § 553).

On March 31, 2017, Defendants filed their Memorandum of Law in Opposition to Trustee’s Motion to Strike and the Declaration of Bryan Ha to which Exhibits A-BB were attached (Adv. Pro. No. 10-04417 (ECF No. 76 and 78) and Adv. Pro. No. 10-04554 (ECF Nos. 79 and 81) (“Opposition”). The Opposition withdrew Defendants’ Twelfth Affirmative Defense.

On April 14, 2017, the Trustee filed his Reply in Support of the Trustee’s Motion to Strike (“Reply”) (Adv. Pro. No. 10-04417 (ECF. No. 79) and Adv. Pro. No. 10-04554 (ECF. No. 82)).

On May 2, 2017, a hearing was held before this Court. At the hearing, because the Defendants submitted a substantial amount of documentary evidence and David Lustig's declaration in opposition to the Motion to Strike, the Court suggested, and the Parties agreed, to treat the Motion to Strike as a motion for partial summary judgment under Rule 56 of the Federal Rules of Civil Procedure ("Motion for Partial Summary Judgment").

The Court issued its Memorandum Decision Granting Partial Summary Judgment Striking Certain Affirmative Defenses on June 1, 2017 ("Decision") holding Defendants' Eighth through Eleventh Affirmative Defenses are stricken and the Twelfth Affirmative Defense is withdrawn (Adv. Pro. No.10-04417 (ECF. No. 82) and Adv. Pro. No.10-04554 (ECF. No. 84).

For the reasons set forth in the Court's Decision, which is incorporated herein and made a part hereof, it is hereby **ORDERED** that:

1. The Trustee's Motion for Partial Summary Judgment is **GRANTED**; and
2. Defendants' Affirmative Defenses Eight, Nine, Ten and Eleven are stricken and dismissed as a matter of law, and the Twelfth Affirmative Defense has been withdrawn.

Dated: June 12, 2017  
New York, New York

/s/ STUART M. BERNSTEIN  
HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE